

MINUTES
INSOLVENCY LAW COMMITTEE
OF THE BUSINESS LAW SECTION
OF THE STATE BAR OF CALIFORNIA

March 9, 2007

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on March 9, 2007, hosted by San Francisco, at Reed Smith, 2 Embarcadero Center, Suite 2000, San Francisco, California.

The following members and advisors attended in person in San Francisco at the host site:

Mark Porter
Barry Glaser
Donna Parkinson
Douglas Boven
Rebecca Littenecker
Penn Butler
Elizabeth Burke-Dreyfuss (Advisor)
Molly Baier
Rob Harris
Edward Tredinnick
Ellen Friedman
Donald Cram

The following member and ex officio member attended in person at the Los Angeles host site:

David Meadows
Russell Clementson (Ex Officio)
Pamela Webster

The following members, advisors, ExComm Liaison, and ex officio member appeared from various locations telephonically:

Christopher Celentino
Mary Jo Wiggins
Peter Bronson (ExComm Liaison)
Douglas Craft
Maria Pum
Sandra Lavigna (Ex Officio)
Victor Vilaplana
Justin Harris (Advisor)
Colin Wied (Advisor)

1. Administrative Matters (Mark Porter)

a. Consideration of Minutes: February 16, 2007

There were two changes noted to be made to the minutes. First, it was noted that the program on Bankruptcy and Real Estate is being coordinated by both Maria Pum and Pam Webster, and the minutes were so reflected. Second, it was noted that Peter Bronson was improperly identified as an Advisor, when he is indeed an Ex Comm Liaison, and the minutes were so reflected. Upon duly made motion, and second, the minutes, as amended, were approved.

b. Solicitation of Applications for Next Term

The Chair noted that Donald Cram and Molly Baier would be entitled to reapply for another term of the Committee, in that each is filling a previously vacated term, and that they were encouraged to do so. The Chair noted that the demographics of the currently constituted Committee, and how it would look given the expiration of certain persons' terms, looked as represented in the attached table:

Current Number as Presently Constituted	Representative District	2007-2008 Number Based Upon Term Limits
9	Central	9
3	Eastern	3
10	Northern	6
3	Southern	2

Donna Parkinson has agreed to coordinate the recruiting effort, and the Committee as a whole was pleased to accept Donna's assistance. A member noted that Diversity of personnel, backgrounds and geography should be important factors in the recruitment of appropriate candidates. Peter Bronson reported that the ExComm deadline is May 1 for nominations of new Chairs and Vice-Chairs and June 15 for the ExComm Standing Committee.

c. Committee List Serve. The Chair reported that the updated information for List Serve notices had been provided to Susan Orloff and that the corrections should indeed have been made.

2. Legislative Subcommittee Report

a. Section Legislative Proposals for 2007

i. CCP section 697.530 and judgment liens against foreign corporations proposed response to the UCC Committee (Mark Porter)

A detailed discussion of a draft of a proposed letter on the above topic resulted in several significant and important changes being incorporated, and considered, to the draft that was

circulated to Committee members for comment. One strong policy approach represented in the discussion was the notion that having a system – even if imperfect – is better than having hidden liens, and that perhaps the letter should include more examples. Another member indicated that an alternative for the judgment creditor in this context, if changes are not made, is to shut down the company/debtor, a result not generally favored by the Committee. A motion was made, and seconded, to have the Chair finalize the letter, taking into account the comments of the discussion, and same was approved. The Chair noted that we will carefully consider our approach to the UCC Committee and that the Chair will reach out to one or more member(s) thereof as part of the continued dialog on this important problem.

ii. Proposed ALP regarding renewal of judgment lien and priority (Molly Baier).

The Committee engaged in a detailed discussion of a proposed ALP concerning the renewal of judgment liens and priority of judgment liens as affecting judgment creditors. Several Committee members commented concerning different aspects of the ALP; pointing out language in the draft that conflicted with, or used the same words with different meanings, than certain sections of the Commercial code, such as UCC 9515(3); one member circulated proposed changes for email for comment by Committee members; one member noted that the Secretary of State approved Continuation Statement should be consulted so that the ALP does not conflict with an approved document; another member discussed whether the concept of “notice” of lien should be modified and clarified as it appeared in the draft ALP. After lively discussion, the Chair sought, because of time constraints, that (a) the authors modify the ALP to take into account the commentary offered by Committee members; (b) the authors seek additional commentary from additional interested parties and Committee members; (c) that the revised draft be circulated for further comment and evaluation; and (d) that the Committee agree to review and conduct a vote to approve the revised ALP, electronically via email for formal action. A motion was so made, duly seconded, and approved.

iii. 580b Protections on refinanced loans (Barry Glaser/Rob Harris)

Rob Harris reported the status of the project, and that a telephonic meeting was set for the following week with interested parties to discuss the project and make recommendations to the Committee. There being no further discussion, the Chair noted that there would be further comment at a later date.

iv. Report on Schechter proposal following Adomah (notice of levy to a bank and intervening bankruptcy): best practices article v. ALP? (Molly Baier)

The Committee discussed the question of how best to address the inconsistent practice of dealing with financial institutions that are in receipt of some form of garnishment or levy when the garnished defendant/debtor subsequently files a bankruptcy proceeding, and the creditor, debtor, and sometimes debtor’s trustee subsequently make conflicting demands upon the financial institution. Molly reported that financial institutions often try to get the parties to work it out, which doesn’t often work because the parties do not often communicate well or coordinate. A discussion was had concerning the Citizens’ Bank case and the validity of a

temporary administrative hold pending further proceedings. One member reported that the fight among the parties happens a lot, and that financial institutions are often called upon to “turnover” funds to the Debtor/Trustees w/o any further Court order, causing consternation for the financial institutions. A Committee member discussed the problem faced by the banks for honoring of the garnishment/levy as a violation of the automatic stay. Another Committee member spoke of the right of the financial institution to interplead the monies and seek reimbursement for the costs of same pursuant to the state or federal interpleader statute. After discussion, the Chair asked for a consensus call from the Committee about whether an ALP on this topic would be within the Committee’s purview. After discussion, it was generally concluded by the Committee that such an ALP would be “out of purview” and therefore that the Chair would communicate with Mr. Schechter that the topic would be best handled as an instructional article, but not an ALP.

At this point, at approximately 11:00 a.m., Christopher Celentino, Secretary, had to exit the meeting and Molly Baier graciously agreed to become Secretary for the balance of the meeting.

b. ALP re CCP § 703.130 and other provisions containing erroneous reference to Bankruptcy Code.

This issue may need to be deferred till next year.

c. Legislative Subcommittee Recommendations on Bill Tracking.

In the absence of Gary Kaplan, David Meadows reported that, on page 46 of the Legislative Matrix, two bills were identified as being worth watching:

- (1) Homestead exemption;
- (2) Probate Code – Notices of claims to creditors.

In reference to page 43, David also raised the question of how to determine which state bills are of interest to us. In other words, what kind of search logic should we use to come up with bills to watch?

At this point, Gary Kaplan joined the meeting.

d. California Law Revision Commission: Mechanics’ Lien Law – Tentative Recommendation Report.

The letter commenting on this issue will be finalized and circulated for input from the Committee members in a week or two.

3. Website and Constituency Subcommittee Report

a. Utilization Report and Constituency List.

The Chair indicated that, with 900 people on our Constituency list, we are in 3rd place in terms of the number of members.

b. Web updates.

Eric Winston informed the Committee that new items have been posted on the website. It takes 1 to 1½ week from the date of submission for a new posting to be available on the website. He stated that the June meeting might be a good time to go through the website page by page.

c. E-Bulletins.

Donna Parkinson informed the Committee that 2 E-Bulletins have been published. The Chair asked the Committee members to inform him and Donna if they run into a case that seems important. Their name can be posted as a contributor. Dan Schechter's materials can only be used if they relate to California, due to his agreement with Westlaw.

d. Cocktail Party at CBF.

Donna Parkinson updated the Committee on the Cocktail Party which is to take place on Saturday, May 19, 2007 from 4:30 p.m. to 6:30 p.m.

Donna reported that usually, 30-40 guests attend. Donna suggested it would be better to increase the number of attendees now, since we get only one purchase order and currently have approval for only 50 guests. Donna indicated that \$3,000.00 was discussed at the committee meeting last June.

Peter said that he will talk to Susan Orloff about increasing the approved amount.

Rebecca presented her thanks to the organizers.

Donna announced that an e-bulletin will be sent out about this.

The Chair asked how many Committee members will be attending.

Justin Harris: Maybe

Dave Meadows: Yes

Doug Boven: Maybe

Victor Vilaplana: No

There will be 3 attendees from San Francisco.

4. Publication Subcommittee Report

a. Report on Status of Subcommittee projects.

Mary Jo Wiggins indicated that March 31 is the “Business Law News” deadline. There will be another Publications Subcommittee meeting in a few weeks.

Mark informed the Committee that he and Ellen Friedman are doing the BASF Liquidation Program. This will work into Publication.

Mark reminded the attendees to “send in” to him their pet peeves (addressed to corporate colleagues).

b. Chapter 11 Manual Project.

At the last meeting, the copyright issue was discussed. It has not been resolved.

Colin Wied indicated that he hoped the Committee would be able to publish the manual in California and other districts. Colin thanked Sandy for editing Chapter 11 Plan Section – Part III. Further edits to Part III should not be done until Colin has incorporated Sandy’s Part III changes.

Colin informed the Committee that he needed help editing Parts I and II, and needed Northern, Central and Eastern District people to edit regarding local projects.

5. Education Subcommittee Report

a. Annual Meeting of the State Bar in Fall 2007

Ed Tredinnick informed the Committee that the Subcommittee is waiting to hear what programs have been accepted for the State Bar meeting.

b. Report on Ninth Circuit Review Webinar.

20 people attended the Webinar. Material can now be purchased on the Website. There are 2 sets of materials: (1) PowerPoint presentation, and (2) All cases decided by the 9th Circuit and BAP from July 2006 to December 31, 2006.

For the “Part III” program, the subcommittee is trying to plan it for about one week after the June 30th cutoff; maybe the 2nd week of July.

Mark thanked Liz’s staff for their efforts in putting together the PowerPoint presentation.

c. Other Webinar topics.

Mark indicated that the Chapter 9 and Assignment for the Benefit of Creditors programs were both off the list last time. This leaves 2 programs:

1) Construction Law – Maria Pum and Chris Celentino have not had a chance to talk yet. Maria will contact him. They were willing to do this program as a webinar, but are uncertain as what they want to do.

2) Enforcement of Judgment – Donna Parkinson and Doug Boven need to find an appropriate angle from which to present this because there are a lot of programs.

3) Financial Planning and Accounting Course – Mark will carry this as an alternative. He asks if anyone thinks this is a webinar topic.

Donna indicated that Jim Sheppard is coming to Sacramento next month. She will attend and report back.

Doug indicated that there is less interest in doing “exotic” programs given that filings are down.

September is the deadline for programs for SEI.

Liz Berke-Dreyfuss stated that at the last SEI, the Tax Section put on a program on “discharging taxes”.

6. Relationships with other standing Committees and organizations

a. UCC Committee Update.

Jay Bingham was not present and therefore no update was given to the Committee.

b. Other State Bar Committee Updates.

Victor Vilaplana will pull out notes and get back to Mark.

7. Update from Executive Committee Liaison

Peter Bronson stated that the Executive Committee has not met since the last ILC meeting. The Executive Committee will meet on March 18 and at that time, it will discuss “Work Rooms” as alternative to E-Mails.

8. New Business

No new business being brought to the Committee, the meeting is adjourned.

9. Adjournment

The meeting is adjourned at 11:42 a.m.